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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,780	08/15/2003	Jesse J. Williams	71189-1501	1779
20915	7590	07/12/2006		
MCGARRY BAIR PC 171 MONROE AVENUE, N.W. SUITE 600 GRAND RAPIDS, MI 49503			EXAMINER DOUYON, LORNA M	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/604,780	Applicant(s) WILLIAMS ET AL.	
	Examiner Loma M. Douyon	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 24, 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-49,51,52,54-59 and 87-114 is/are pending in the application.
- 4a) Of the above claim(s) 1-48,87-93 and 100-114 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49,51,52,54-59 and 94-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/20/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on April 24, 2006.
2. Claims 1-49, 51-52, 54-59, 87-114 are pending. Claims 50, 53, 60-86 have been cancelled. Claims 1-48, 87-93 and 100-114 are withdrawn from consideration.
3. The objection to claim 51 for minor informality is withdrawn in view of Applicants' amendment.
4. **Claim 98 is rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 98, line 1, the phrase "the aerosol propellant" lacks support with respect to claim 49 which recites "propellant" only (see line 6).
5. **Newly submitted claims 100-114** are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These claims are identical to Group I which was restricted, Group I has two chambers and is classified in 510/277, whereas the elected invention, Group II, is classified in 510/406, and Groups I and II have different modes of operation and different effects. Because these inventions have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 100-114 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

6. The rejection of claims 49-52 and 60 under 35 U.S.C. 102(b) as being anticipated by Kenkare et al. (US Patent No. 3,722,752) is withdrawn in view of Applicants' amendment.

7. Claims 49, 51, 52, 54, 96-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers et al. (US Patent No. 6,021,926), hereinafter "Lauwers".

Kenkare teaches a packaged self-heating cosmetic, such as a shaving cream which includes separate reductant and an oxidant, wherein the oxidant is aqueous hydrogen peroxide (see abstract). The package is a plural compartment dispenser which includes a main compartment which contains liquefied gas (propellant) and other ingredients, plus a smaller compartment which is collapsible under pressure of the liquefied gas, as the contents are dispensed, wherein a valve communicates with the contents of the compartments by means of dip tubes and such valve or plural valves are actuatable by movement of a spout or other dispensing member (see col. 3, lines 3-28, see also col. 9, lines 8-42). Present with the aqueous hydrogen peroxide solution may be minor proportions of sequestrants, chelating agents and other stabilizers, such as nitrilotriacetic acid or its trisodium salt (see col. 6, lines 50-57). Anti-soil or anti-stain protectants need not be present as they are only optional ingredients. The oxidants and

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reductants are low in corrosivity toward ordinary materials of container construction, such as tinplate or steel coated with resins commonly used for that purpose (see col. 12, lines 52-55). In pressurized compositions, there will usually be present from 3 to 90 percent of liquefied or compressed gas (see col. 10, lines 8-10). Kenkare also teaches a pressure on the compartment of about 40 lbs/sq. in. (see col. 14, lines 15-21), (which reads on about 45 lbs/sq. in. as the term “about” permits some tolerance). Kenkare, however, fails to specifically disclose an uncoated aluminum chamber.

Lauwers, an analogous art, teaches an aerosol package wherein the container is made from any material, preferably aluminium (which is construed to include uncoated aluminum), tin-steel plate or other metals, and preferably the interior surface of the metal container is laminated with a plastic material or coated with a lacquer or with a varnish, for example, epoxy phenolic, polyamide-imide, organosol, polyethylene terephthalate (PET), PP, or polyethylene (PE) or a combination thereof (see col. 3, lines 26-43). Lauwers also teaches that the opening of the package is closed by a valve (see col. 3, lines 51-52) and nozzles are attached to the valve having three orifices with a diameter of about 1.3 mm (0.050 inch) (see col. 5, lines 1-22) which reads on the 0.024 inch orifice of the instant claims because the term “about” permits some tolerance, see *In re Ayers*, 69 USPQ 109, and *In re Erickson*, 145 USPQ 207. The nozzle is made of thermoplastic material, for example, polymers and co-polymers derived from olefins (see col. 5, lines 58-61)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the tin or steel container of Kenkare with uncoated aluminum, which is

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also construed to read on drawn aluminum, because the substitution of art recognized equivalents as shown by Lauwers is within the level of ordinary skill in the art.

8. Claims 55-56 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers as applied to the above claims, and further in view of Hart et al. (US Patent No. 3,970,584), hereinafter "Hart".

Kenkare in view of Lauwers teaches the features as described above. However, the combination of reference fails to specifically disclose the dip tube being made of a thermoplastic material such as an olefin polymer.

Hart teaches a similar package wherein the dip tube is made from polyethylene (see col. 5, line 38).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a dip tube made from polyethylene because it is shown from Hart that dip tubes of said material is common in a similar package.

9. Claims 58-59 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers as applied to the above claims, and further in view of Schmitt (US Patent No. 3,866,800).

Kenkare in view of Lauwers teaches the features as described above. However, the combination of reference fails to specifically disclose the valve containing a spring that is made from stainless steel.

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Schmitt teaches a similar package wherein the valve containing a spring is made of steel (see col. 9, lines 57-62), which is construed to be a stainless steel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a spring made of stainless steel in the container of Kenkare in view of Lauwers because not only is a stainless steel spring in the valve a common material used in similar package as shown by Schmitt, but also said material is resistant to corrosion.

10. Claim 57 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers as applied to the above claims, and further in view of Miles (US Patent 3,722,753).

Kenkare in view of Lauwers teaches the features as described above. However, the combination of reference fails to specifically disclose the valve made of nylon.

Miles teaches a similar package wherein the valve is made of nylon (see col. 3, lines 65-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a valve made of nylon in the container of Kenkare in view of Lauwers because it is shown by Miles that said material is useful as a valve in a similar package.

11. Claims 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers as applied to the above claims, and further in view of Miles, and further in view of Barger et al. (US Patent No. 5,921,447), hereinafter "Barger".

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Kenkare in view of Lauwers and Miles teaches the features as described above. However, the combination of reference fails to specifically disclose the gasket made of ethylene propylene diene terpolymer.

Barger teaches a similar package wherein the gasket is made of ethylene propylene diene (see col. 10, lines 46-48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a gasket made of ethylene propylene diene terpolymer in the container of Kenkare in view of Lauwers and Miles because it is shown by Barger that said material is useful as a gasket in a similar package.

12. Claim 95 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenkare in view of Lauwers as applied to the above claims, and further in view of Spitzer et al. (US Patent No. 3,970,219), hereinafter "Spitzer".

Kenkare in view of Lauwers teaches the features as described above. However, the combination of reference fails to specifically disclose the dip tube being made of a thermoplastic material such as an olefin polymer.

Spitzer teaches a similar package wherein the container is made of anodized aluminum (see col. 6, lines 21-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a container made of anodized aluminum because it is shown from Hart that containers of said material is common in a similar package.

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Response to Arguments

13. Applicant's arguments filed April 24, 2006 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Kenkare in view of Lauwers, Applicant argues that Kenkare relates to a self heating shaving composition whereas Lauwers relates to a cleaning composition and that there is no disclosure in Lauwers of packaging a peroxide composition in the container.

The Examiner respectfully disagrees with the above arguments because both Kenkare and Lauwers are in the same analogous art of cleaning, hence, the combination is proper and is maintained.

With respect to the remaining dependent claims based upon Kenkare in view of Lauwers in further view of Hart, or Schmitt, or Miles, Applicants argue that the uncombinability of Kenkare and Lauwers has been discussed above and are applicable here.

The response above applies here as well.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

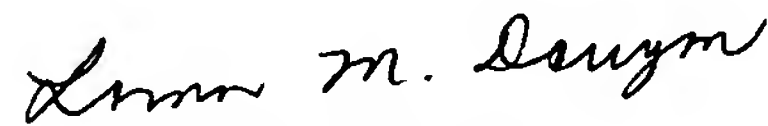
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lorna M. Douyon
Primary Examiner
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